IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

UNITED STATES OF AMERICA

v. CRIMINAL NO. 3:14cr111HTW-FKB

CHRISTOPHER B. EPPS

GOVERNMENT'S RESPONSE TO DEFENDANT CHRISTOPHER B. EPPS'S MOTION FOR AMENDMENT OR MODIFICATION OF DETENTION

The United States of America (hereafter "the Government") respectfully requests that defendant Christopher B. Epps's Motion for Amendment or Modification of Detention be denied. *See* Dkt. No. 90.

I. BACKGROUND

Defendant Epps was indicted on August 5, 2014, in the Southern District of Mississippi. Dkt. No. 3. He was charged in a 49 count Indictment with conspiracy to commit wire fraud to deprive the citizens of the State of Mississippi of their intangible right to Epps's honest services; with accepting bribes and kickbacks; with structuring deposits to avoid currency transaction reporting requirements; with money laundering; and, with presenting false tax returns to the Internal Revenue Service.

On February 25, 2015, Epps pleaded guilty to conspiracy to commit money laundering and to filing a fraudulent tax return. Epps was allowed to remain free upon conditions of his bond post plea. His sentencing is currently set for May 25, 2017.

At the conclusion of a two-day hearing, on November 4, 2016, the Court revoked Epps's bond and detained him pending sentencing by finding that probable cause existed to believe that Epps committed the state crime of burglary of an uninhabited dwelling pursuant to Miss. Code Ann. §97-17-23. Additionally, the Court found no adequate explanation for Epps's transgression and found that he was unlikely to abide by any condition or combination of conditions of release and that no set of conditions would assure that the defendant will not pose a danger to any other person or the community.

II. Discussion

Epps's now seeks to amend or modify the Court's order of detention. *See* Dkt. No. 90. In support of his motion, Epps states that he "has complied with the Court's request to provide additional information as to the ownership of his residence and the source of funds for the bond money posted. Also, [that he] has recently been offered employment and will be working full-time if released." ¶3. Dkt. No. 90. He also reargues several facts that were previously disclosed at that hearing (e.g., his attendance at all court appearances, his location at his home when arrested on this Court's warrant, his compliance with his bond conditions prior to his violation of state law of burglary, and that this was an isolated and remote event out of character for Epps. ¶¶5-8. Dkt. No. 90.

Epps claims that for these reasons he should be released from detention under 18 U.S.C. § 3145(b). However, contrary to Epps's argument, 18 U.S.C. § 3145(b) avails him no relief. Section 3145(b) provides "If a person is ordered detained by a magistrate judge, or by a person other than a judge of a court having original jurisdiction over the offense and other than a Federal appellate court, the person may file, with the court having original jurisdiction over the offense, a motion for revocation or amendment of the order."

In the instant case, the order of the Court revoking Epps's bond and detaining him was in fact entered by a court having original jurisdiction. Thus, Epps must resort to this Court's inherent authority to rehear the matter.

There is no reason for the court to exercise its discretion to rehear the revocation and detention. Where the facts nor the law upon which the court predicated its order have changed, no rehearing is warranted.

Under 18 U.S.C. § 3148(b) a judicial officer *shall* enter an order of revocation *and* detention, after a hearing, [where] the judicial officer

(1) finds that there is-

> (A) probable cause to believe that the person has committed a Federal, State, or local crime while on release; or
>
> (B) clear and convincing evidence that the person has violated any other condition of release; and

(2) finds that-

> (A) based on the factors set forth in section 3142(g) of this title, there is no condition or combination of conditions of release that will assure that the person will not flee or pose a danger to the safety of any other person or the community; or
>
> (B) the person is unlikely to abide by any condition or combination of conditions of release.

If there is probable cause to believe that, while on release, the person committed a Federal, State, or local felony, a rebuttable presumption arises that no condition or combination of conditions will assure that the person will not pose a danger to the safety of any other person or the community. If the judicial officer finds that there are conditions of release that will assure that the person will not flee or pose a danger to the safety of any other person or the community, and that the person will abide by such conditions, the judicial officer shall treat the person in accordance with the provisions of section 3142 of this title and may amend the conditions of release accordingly.

The order of revocation and detention is mandatory upon the facts of this case. On the evidence before it, the Court found by probable cause that Epps violated state law and found that he was unlikely to abide by any condition or combination of conditions of release and that no set of conditions would assure that the defendant will not pose a danger to any other person or the community. There is no just reason for the Court to exercise its inherent authority to revisit Epps's revocation and detention.

Moreover, the allegations made by Epps in his motion reargue in large part the arguments made at the hearing. The only "new" evidence offered is that he may soon have a job. His other "new" assertions allege responses to the Court's inquiry as to ownership of his current residence and the source of his funds for his state bond. Neither of these are considered new because the information existed prior to the hearing.

Here, Epps has not provided any information that was not known at the time of his earlier revocation hearing. Regardless, none of the allegations has any bearing on whether probable cause exists that he violated state law or whether he is unlikely to abide by any condition or combination of conditions of release. The only facts that have changed since the hearing are (1) Epps has been offered employment and (2) Epps has submitted information regarding ownership of his current residence and the source of funds for his state bond. Neither of these pertain to his willingness to abide by state law and conditions of release.

III. CONCLUSION

WHEREFORE, the Government requests that Epps's Motion for Amendment or Modification of Detention be denied.

Respectfully submitted,

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/s/ Darren J. LaMarca

By: ______________________________
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Dated: November 25, 2016

CERTIFICATE OF SERVICE

I hereby certify that on this day, I electronically filed the foregoing with the Clerk of the Court using the Electronic Case Filing system (ECF), which served to send notification of this filing to counsel for the defendant.

Dated: November 25, 2016

/s/ Darren J. LaMarca
DARREN J. LAMARCA
Assistant United States Attorney

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